



# **The Court of Appeal for Bermuda**

## **CRIMINAL APPEAL No. 12 of 2009**

Between:

**ZE MENEFESKIDUSE SELASSIE**

**Appellant**

**-V-**

**THE QUEEN**

**Respondent**

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**Before:**        **Zacca, President**  
                  **Evans, JA**  
                  **Auld, JA**

Appearances:     John Perry Q.C. and Ms. Elizabeth Christopher  
                              for the Appellant  
                              Ms. Cindy Clarke and Ms. L. Burgess for the Crown

## **JUDGMENT**

Date of Hearing:                             Monday, 15<sup>th</sup> November 2010  
Date of Judgment on Sentencing:     Friday, 17 June 2011

**ZACCA, PRESIDENT**

**Sentence**

1. The Appellant Selassie, after a conviction by the jury of pre-meditated murder, was sentenced to life imprisonment by the learned Chief Justice, with the proviso that he should serve a term of 35 years before any application could be made to be released on licence. The Chief Justice stated that the reasoning of the Court in Robinson applied equally to section 286A (pre-meditated murder). He has appealed against the sentence.
2. Having dismissed Selassie's appeal against conviction, the Court reserved its decision on Sentence pending the hearing of the appeal of Dennis Robinson in the Privy Council. The Court indicated to Counsel for the Appellant and the Crown that after the ruling in the Privy Council in Robinson's case, if they wished, they could forward further written submission on sentence. This they did.
3. In that case Robinson was convicted for the offence of Murder and sentenced to life imprisonment with the provision that he should serve at least 15 years before any application for his release on licence.
4. Section 288 of the Criminal Code provides as follows:

*Any person who commits the offence of murder should be sentenced to imprisonment for life: Provided that where any person is sentenced under this section, such person shall, before any application for his release on license may be entertained or granted by the Parole Board---serve at least fifteen years of the term of his imprisonment.*
5. This court held that the proviso fixing a term of 15 years was unconstitutional. The basis for the Robinson ruling was that the variety of circumstances in which the offense of Murder can be committed makes it inappropriate that any minimum period of actual detention should be fixed by the Legislature as a general rule. Fixing the proper period in a particular case is a judicial function which can only be performed by the Court.
6. The ruling of the Court of Appeal was not interfered with by the Privy Council.

7. The Court has considered the submissions provided by the Appellant and the Crown.

8. Section 286A(2) is in these terms:

*Any person who is convicted of premeditated murder should be sentenced to imprisonment for life without eligibility for release on licence until the person has served twenty-five years of the sentence.*

9. Sir Anthony Hughes in delivering the Judgment in Robinson's case, said at paragraph 24:

*Separate provision is made by section 286A for the separate offense, not in question here of 'premeditated murder'; in that case the prescribed minimum term is 25 years.*

10. For the appellant it was submitted that the wording of the proviso in section 286A is different from the wording of the proviso in section 288. We do not agree. The meaning of the words is not dissimilar.

11. It was also submitted that the reference to twenty-five years is intended to be a maximum term and therefore the sentence of 35 years conferred by the learned Chief Justice cannot be supported.

12. Our view is that the fixed period (25 years) in section 286A(2) of the 1907 Act has to be regarded as unconstitutional in light of the decision in Robinson under section 288(1) (15 years).

13. We reject the argument that the term 25 years is intended to be a maximum period. First, it would be unsatisfactory to hold that the fixed periods are unconstitutional for one purpose but invalid for another. Secondly, we do not believe that the analogy with a maximum sentence is correct.

14. The result of this is that the trial judge has the discretion, having referred to all the circumstances of the case, to fix the term before which any application for release on licence can be made. It may be less or more than twenty-five years.

15. The issue for this Court is to decide whether the term of 35 years fixed by the trial judge is appropriate in the circumstance of this case.
16. The learned Chief Justice in sentencing was aware of section 54 of the Criminal Code, namely, that the sentence should be proportionate to the gravity of the offence and the degree of the responsibility of the offender.
17. In coming to his decision after hearing submissions from Counsel for the Appellant and the Crown, he stated his reasons as follows:

*In applying those provisions I would first have to fix a starting point. On that basis my starting point would be a 30-year minimum term, this being a murder done to obstruct justice in that the evidence overwhelmingly suggested that the Defendant killed Rhiana to prevent her revealing his paternity of her child. His act also necessarily involved the death of two persons as she was pregnant with a viable foetus, and the killing occurred in a sexual context in the sense that he was conducting an unlawful sexual relationship with this 14-year old girl, who was almost certainly 13 at the time when he made her pregnant.*

*There is no mitigation that I can see to reduce the appropriate minimum period from that starting point. He has shown no remorse.*

*On the other hand, there are serious aggravating factors to increase the minimum period from that starting point. These include the following:*

*One, the victim was a 14-year old girl who was particularly vulnerable because the Defendant had been grooming her for sexual purposes for a protracted period. On his own evidence that grooming involved an elaborate charade that a combination of harmless pills and liquids, when coupled with sexual intercourse, would procure an abortion.*

*Two, on the night in question, he essentially abducted her, in that he set up a secret meeting to lure her away from the protection of her church group and family, and into his power.*

*Three, the mode of death involved 18 stab wounds and the cause of death was slow bleeding from two of those wounds. The pathologist's evidence was that it could have taken her up to a couple of hours to die. The Defendant obviously sought no help*

*for her, and when she was dead he attempted to conceal the body, in the pathologist's words, it was "dumped in the water". I doubt very much that the Defendant expected it to wash up as it did.*

*Finally, I think that I should take into account that he has a bad record, including a previous conviction for a sexual assault on the 2<sup>nd</sup> of May 1999, to which he plead guilty and for which he was sentenced to six years' imprisonment. Prior to that he was convicted on the 11<sup>th</sup> of May 1998 of various offences involving nocturnal intrusions, one of them into the home of a female, nocturnal prowling around the homes of two females, breaking and entering, and assault causing actual bodily harm on a female; for all of which together he received two years' probation.*

*Taking all of those factors into account, I consider that the appropriate provision in this case is a 35-year minimum term; in other words, I direct that the provisions of section 286A(2), which provide for eligibility for release on licence after 25 years, should not apply, and instead I substitute a direction that he should not be eligible for release on licence until he has served 35 years of his sentence.*

18. We are mindful of the exercise of the discretion in the Chief Justice on sentencing.

However, having considered all the circumstances of the case, it is difficult to imagine a worse case of callous premeditated murder of one person by another, with the added factor that she was killed to prevent her from giving birth to her unborn child. We have come to the conclusion that a period of 28 years before the appellant is eligible for release on licence would meet the justice of the case. To that extent the appeal against sentence is allowed.

*Signed*

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Zacca, President

*Signed*

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Evans, JA

*Signed*

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Auld, JA